

## **REMARKS**

After the foregoing Amendment, Claims 1 – 3, 5 – 8, 10 – 17, 19 – 24, and 26 – 39 are currently pending in this application. Claims 1, 6, 12, 23, 30 and 34 have been amended. Claims 4, 9, 18, and 25 were previously cancelled. Claims 38 and 39 are new. Applicant submits that no new matter has been introduced into the application by these amendments.

## **RESTRICTION/ELECTION**

In the Action, claims 1 – 3, 5 – 8, 10 – 17, 19 – 24 and 26 – 37 were made subject to a restriction requirement. The claims were restricted in the Action into the following groups:

**Group I:** Claims 1 – 3, 5 – 8, 10 – 17, 19 – 24 and 26 – 29, drawn to a method; and

**Group II:** Claims 1 and 30 – 37 drawn to an apparatus.

Applicant **provisionally** elects with traverse Group I, corresponding to claims 1 – 3, 5 – 8, 10 – 17, 19 – 24, 26 – 29 and 38 – 39, for examination on the merits, without prejudice to the filing of a divisional application based on the non-elected claims.

M.P.E.P. § 803 (emphasis added) states:

Under the statute, the claims of an application may properly be required to be restricted to one of two or more claimed

inventions only if they are able to support separate patents and they are either independent (MPEP § 802.01, § 806.06, and § 808.01) or distinct (MPEP § 806.05 - § 806.05(j)).

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP § 802.01, § 806.06, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(j)); and

(B) There would be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 808, and § 808.02).

In the Action, the Examiner stated that the inventions of Groups 1 and 2 do not relate to a single inventive concept under PCT Rule 13.1. This is clearly not the case since claims 30 – 33 and claims 34 – 37 depend from claims 1 and 6 respectively. Therefore, the restriction of claims 30 – 37 is improper since they depend from either independent claim 1 or 6. Claims 1 and 6 have already been examined and therefore no serious burden should suddenly exist since an examination has already been conducted. To the extent that claims 30 – 37 contain features in addition to those of independent claims 1 and 6, a restriction is entirely improper. A characterization of claims 1 and 6 as generic claims and requiring an

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election of species might seem more appropriate. Accordingly, the withdrawal of the restriction requirement is respectfully encouraged.

**Conclusion**

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

In view of the foregoing amendment and remarks, Applicant respectfully submits that the present application, including claims 1 – 3, 5 – 8, 10 – 17, 19 – 24, and 26 – 39, is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

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